IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDCITION
CRIMINAL APPEAL NO.537 OF 1990

1. Vitthal Namdeo Mane
(Appellant No.1 abates
vide High Court order
dated 05/08/1991)

2. Smt. Laxmibai Vitthal Mane
Both R/o. H.No.1403,
Saswad, District Pune ... **Appellants**

Versus

State of Maharashtra ... Respondent

Shri P.S. Hingorani APP for the State

CORAM : D.G. DESHPANDE,
& S.R. SATHE, JJ.
DATED : 23rd JANUARY, 2007

ORAL JUDGEMENT :- (PER D.G. DESHPANDE,J.)

1. Heard learned APP for the State. Nobody for the appellant. We have heard the learned APP on the basis of judgement of the Supreme Court in the case of **Bani Singh and Ors. V/s. State of U.P. reported in 1996 Cri.L.J. 3491**.

2. The accused Nos. 1 and 2 are father-in-law and mother-in-law respectively of deceased Padmini. They were convicted for the offence punishable under Section 302 r/w. 34 of IPC and sentenced to suffer life imprisonment. Accused No.3 Kasturibai Jadhav, the

sister of accused No.1, was also prosecuted but she was acquitted of all the charges.

3. The conviction of the accused is based on dying declaration of Padmini recorded by the Special Judicial Magistrate, Pune. It is at Exh-23. The Magistrate was examined by the trial court as PW-2 Subhash Dahiwal. He stated that he had received information from the police. He went to Sasoon Hospital in Ward No.27. He met the concerned doctor and he asked the doctor whether the patient is in conscious condition. Doctor examined Padmini and thereafter, he recorded her dying declaration wherein Padmini stated that accused No.1 poured kerosene on her person and accused No.2 set her on fire by a match stick resulting in 60 to 70% burn.

4. The trial court believed the prosecution case on the basis of dying declaration of victim and other evidence and convicted the accused as, stated above. Hence this appeal.

5. The defence of the appellant was that it was an accidental death. They were outside the house. They heard the shouts and then they rushed and noticed that Padmini caught fire while cooking due to bursting of stove.

6. The defence tried to rely upon the yadi i.e. letter given to the SEO PW-2 by the police about the history of burn. The trial court disbelieved the version of defence and convicted the accused.

7. We do not find any error in the approach of the trial court. The evidence of SEO PW-2 is fully corroborated by the Doctor PW-1 Bharat Tambe. He has stated that he has examined Padmini and he also found that she was in fit condition to give dying declaration. He gave his endorsement on dying declaration and proved the same. He was present throughout when the dying declaration was recorded by the Special Judicial Magistrate. Apart from that, the doctor also recorded the case history of Padmini, which was also consistent with dying declaration.

8. Nowhere the defence succeeds in proving that the information given to the magistrate in the yadi

i.e. letter was for accidental death or did not bring anything on record to their defence. The defence also could not create any doubt about the prosecution case.

9. One tin box of kerosene of 5 liters capacity wherein about ¼ liter kerosene was found and one match stick box was found in the panchanama of the scene of offence (Exh-25). No stove in burst condition was found at the place. Therefore this falsifies the defence that it was the case of accidental fire.

10. In dying declaration Padmini clearly stated that as she did not wash the saree of Kasturabai, accused No.1 poured kerosene on her and accused No.2 set her on fire by a burning match stick and burnt her. Apart from this dying declaration recorded by Special Judicial Magistrate, there is separate statement of Padmini recorded by the P.I., Saswad Police Station at Exh-49. There is no endorsement of Doctor upon this Exh-49. The fact remains that this statement is consistent with the dying declaration recorded by magistrate.

11. We do not find any fault in the reasoning and approach of the trial court. This is a main aspect of

the matter i.e. dying declaration. There is absolutely nothing to indicate that dying declaration was tutored because Special Judicial Magistrate categorically stated that at the time of recording dying declaration of the said patient, neither relatives of patient nor any police officer was present in Ward No.27. Therefore dying declaration fully corroborated by the medical evidence was found sufficient to inspire the confidence of the Court. The conviction of accused was proper. No interference is called for. Therefore, Order:-

O R D E R

The Appeal is dismissed.

Appellant/ Original Accused No.1 Vitthal Namdeo Mane died. His appeal was abatted vide High Court order dated 05/08/1991.

Appellant/ Original Accused No.2 Smt. Laxmibai Vitthal Mane is on bail.

She should surrender before the Trial Court within four weeks from today. If she fails to surrender, the trial court will take action under Criminal Procedure Code to send her to jail to undergo the sentence.

(D.G. DESHPANDE,J.)

(S.R. SATHE,J.)